

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BECKLEY

JANETT SMITH,

Plaintiff,

v.

CIVIL ACTION NO. 5:04-0639

JO ANNE B. BARNHART,

Defendant.

MEMORANDUM OPINION AND ORDER

By Standing Order entered nunc pro tunc May 13, 2002, and filed in this case on June 23, 2004, this matter was referred to United States Magistrate Judge R. Clarke VanDervort. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Standing Order directs Magistrate Judge VanDervort to submit proposed findings and recommendation concerning the disposition of this matter. Magistrate Judge VanDervort submitted his Proposed Findings and Recommendation on April 21, 2005, and proposed that this court (1) confirm and accept the factual and legal analysis within his Proposed Findings and Recommendation, (2) dismiss petitioner's application with prejudice, and (3) direct the Clerk to remove this matter from the court's docket.

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge VanDervort's Proposed Findings and Recommendation. The failure of any party to file

objections within the appropriate time frame constitutes a waiver of such party's right to a de novo review by this court.

Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985). No objections have been filed by either party.

Having reviewed the Findings and Recommendation filed by Magistrate Judge VanDervort, the court hereby (1) **CONFIRMS** and **ACCEPTS** the factual and legal analysis within the magistrate judge's Proposed Findings and Recommendation, (2) **DENIES** plaintiff's motion for judgment on the pleadings, and (3) **GRANTS** defendant's motion for judgment on the pleadings, (4) **AFFIRMS** the final decision of the Commissioner; and (5) **DIRECTS** the Clerk to remove this matter from the court's docket.

The Clerk is directed to forward a certified copy of this written opinion and order to all counsel of record and to any unrepresented party.

It is **SO ORDERED** this 7th day of September, 2005.

ENTER:

David A. Faber

David A. Faber  
Chief Judge